

6/30/03 doctored
S I D

S A R G E N T & K R A H N

PATENT & TRADEMARK ATTORNEYS
ESTABLISHED SINCE 1889

MARCO CARIOLA
SERGIO DIEZ U.

EULOGIO PEREZ-COTAPOS
SEBASTIAN OBACH
JOSE LUIS LETELIER
JORGE CARO
FERNANDO CASTRO
ALFREDO MONTANER
FRANCISCO JAVIER ILLANES
SERGIO DIEZ A.
CARLOS PEREZ-COTAPOS
GERARDO VARELA
JUAN PABLO EGAÑA
FLORENCIO BERNALES
JUAN PABLO MATUS
LUIS OSCAR HERRERA
VALENTINA FUENTES
FERNANDA DIEZ
JORGE MARTINEZ
MARIA LUISA VALDES
OSCAR FERRARI
JUAN CRISTOBAL GUMUCIO

CRISTIAN HERRERA
RICARDO TISI
IGNACIO ARTEAGA
RODRIGO SEPULVEDA
ISABEL SAINZ
GONZALO JIMENEZ
JOSE MIGUEL GANA
MARIA GRACIA CARIOLA
MATIAS ZEGERS
GONZALO GREZ
MATIAS SOMARRIVA
LINA ABAD
CARMEN PAZ ALVAREZ
CLAUS KREBS
PATRICIO DE LA BARRA
LUIS FELIPE ARZE
SYLVIA CHAMORRO
ANDRES LAVIN
JUAN PABLO ORELLANA
PAULINA SANTELICES
RAIMUNDO MORENO
JERONIMO CARCELEN
FERNANDO URRUTIA

CARLOS PRAT
JUAN PABLO SCHAEFFER
PABLA GAINZA
FELIPE BENAVIDES
LUCIANO CRUZ
MARIO LARENAS
RODRIGO FERNANDEZ
MARIO TAPIA
JORGE ARANCIBIA
JUAN ESTEBAN MONTERO
MARISOL CORDOVA
SILVANA SCHENONE
LUIS FERNANDO URETA
MARCELA FERNANDEZ
CAROLINA VALDIVIA
DANIELLA PIANTINI

COUNSEL:
CARLOS PUELMA

ADDRESS
AV. ANDRES BELLO 2711, PISO 19

SANTIAGO - CHILE

P.O. BOX
409-V, CORREO 21

TELEPHONE
(56-2) 368 3500*

TELEFAX
(56-2) 360 4010

E-MAIL
sargent@sargent.cl

WEB SITE
WWW.SARGENT.CL

June 11, 2003

VIA FAX Nº (1) 617 452 1666

Messrs.

FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER LLP.
55 Cambridge Parkway
Cambridge, MA 02142
UNITED STATES

OUR REF.: 800.736

YOUR REF.: 08500.7237-00137

COPY TO PERMISSION
CONFIDENTIAL COPY

Dear Sirs:

Chilean Patent Application Nº177-99 in the name of Continental Pet Technologies, Inc.

We wish to inform you that a first substantive Report has been issued on this application, in which the Examiner states the following:

I) CLAIM ANALYSIS

Unity of invention:

Claims 55-57, 72 and 77 are not patentable according to Arts. 44 and 48 of the Regulation of the Chilean Industrial Property Law 19.039, because they describe a method for reducing the melt index of the polyamide and a xylidene-substituted polyamide (not novel), while Claim 1 describes a package for an aqueous liquid having a wall comprising an oxygen-scavenging polymeric composition. Therefore, Claims 55-57, 72 and 77 lack unity of invention and should be deleted.

Please bear in mind that the applicant has the option of filing Divisional Applications for protecting those matters which should be deleted from the present application.

Claims 74 and 75 are not patentable according to Arts. 45 and 48 of the Regulation of the Chilean Industrial Property Law 19.039, because they define a product by results. A product should be defined by its components.

In Claims 47, 48, 49 and 50, the units should be converted into the decimal metric system.

II) NOVELTY AND INVENTIVE STEP ANALYSIS

The following documents affect the present application.

DN6: Chilean Patent Application 1992-97 (CONTINENTAL PET, September 25, 1997) affects Claims 1, 2, 6-10, 11, 12, 15-18, 24 and 80. Please find a copy enclosed.

D1: EP 0 520 257 (GRACE WR & CO, December 30, 1992) affects Claims 1-6, 9, 11, 12, 15, 22, 24, 30, 33, 36, 77 and 79.

D2: EP 0 507 207 (GRACE WR & CO, October 7, 1992) affects Claims 1, 2, 6, 9, 12, 15, 24 and 76.

D3: EP 0 301 719 (MB GROUP PLC, February 1, 1989) affects Claims 1-6, 9, 11, 12, 15, 22-24, 30, 33, 36, 76, 77 and 79.

D4: EP 0 380 319 (CMB FOODCAN PLC, August 1, 1990) affects Claims 1-6, 9, 12, 15, 22, 24, 30, 76, 77 and 79.

D5: WO 90 00504 (PLM AB; HAUSTRUP PLASTIC, January 25, 1990) affects Claims 1, 3-5, 15, 22, 24, 77 and 79.

D6: WO 90 00578 (PLM AB; HAUSTRUP PLASTIC, January 25, 1990) affects Claims 1, 3-5, 15, 22, 24, 77 and 79.

D7: WO 96 18685 (CONTINENTAL PET, June 20, 1996) affects Claims 1-7, 12, 15, 22-24, 30, 33-35, 71, 76, 77 and 79.

D8: WO 96 18686 (CONTINENTAL PET, June 20, 1996) affects Claims 1, 2, 5, 6, 9, 10, 11, 12, 24, 76 and 80.

D10: US 5 639 815 (COCHRAN M ET AL, June 17, 1997) affects Claims 1-6, 9, 11, 12, 15, 22, 24, 30, 76, 77 and 79.

a) Novelty Analysis

Claims 1, 2, 6-10, 11, 12, 15-18, 24 and 80 of the present application lack novelty because DN6, in Claims 1, 4, 6, 16, 27, 46 and 51, also discloses a method for removing oxygen from a liquid, and a transparent article such as an oxygen scavenging multi-layer package, which comprises a biaxially oriented aromatic polyester (polyethylene terephthalate) and a scavenging aromatic ester polymer which includes oxygen-scavenging carbonyl alpha-hydrogen functional groups. The article has a transference defined as the turbidity index of less than 10%, and less than 5%.

Claims 1-6, 9, 11, 12, 15, 22, 24, 30, 33, 36, 77 and 79 of the present application lack novelty because D1, in Claims 1, 3, 15, 16, 33 and 34 and pages 3 and 5 of the Specification, also discloses a method for removing oxygen from a liquid, and an article such as a transparent package for oxygen-sensitive products, which comprises a layer, adjacent to other additional layers, comprising a composition of an oxidizable organic compound and a transition metal catalyst. The metal catalyst is selected from cobalt salts present at 500 ppm (Example 10). Among the oxidizable compounds, there are polyamides, such as MXD-6 (metaxylideneadipamide). The oxygen-scavenging layer is adjacent a layer of a polymer selected from polyethylene terephthalate (page 6, line 26).

Claims 1, 2, 6, 9, 12, 15, 24 and 76 of the present application lack novelty because D2, in Claims 1, 12, 19, 33 and 39-41, discloses a method for removing oxygen from a liquid, and a transparent article such as a bottle for oxygen-sensitive products, which comprises a layer of a composition comprising an ethylenically saturated hydrocarbon and a transition metal catalyst, the metal being cobalt. The oxygen-scavenging layer may also be adjacent a layer of a polymer selected from polyesters and polyolefins.

Claims 1-6, 9, 11, 12, 15, 22, 23, 24, 30, 33, 36, 76, 77 and 79 of the present application lack novelty because D3, in Claims 1, 11, 13, 16, 20, 21 and 37, discloses a method for removing or reducing the oxygen from a liquid, and a package, such as a beverage bottle, which comprises an oxygen-scavenging layer of an oxidizable organic compound such as a polyamide and a metal such as cobalt, present at 10-300 ppm. The oxygen-scavenging layer may also be adjacent a layer of a polymer selected from polyethylene terephthalate. A preferred composition described is a mixture of 96% polyethylene terephthalate and 4% poly(m-xylideneadipamide) containing 200 ppm cobalt as a catalyst, exhibiting good properties for manufacturing a bottle.

Claims 1-6, 9, 12, 15, 22, 24, 30, 76, 77 and 79 of the present application lack novelty because D4, in pages 2 and 3 and Table 5 of the Specification, also discloses a method for removing or reducing the oxygen from a liquid, and a package comprising an oxygen-scavenging cover consisting of an oxidizable organic compound such as a polyamide, like poly(m-xylidenediamide), and a metal such as cobalt, present at 200 ppm. The oxygen-scavenging layer may also be adjacent a layer of a polymer selected from polyesters and polyolefins.

Claims 1, 3-5, 15, 22, 24, 77 and 79 of the present application lack novelty because D5, in Claims 1, 3-5 and 10 and pages 4-6 of the Specification, also discloses a method for removing oxygen from a liquid in a transparent package which comprises an oxygen-scavenging polymeric composition comprising solid-stated xylidene-substituted polyamide (Example 3 discloses MXD-6) and cobalt (500-2,000 ppm).

Claims 1, 3-5, 15, 22, 24, 77 and 79 of the present application lack novelty because D6, in Claims 1, 3 and 4 and pages 2-3 of the Specification, discloses a transparent package which comprises an oxygen-scavenging polymeric composition comprising solid-stated xylidene-substituted polyamide (Example 2 discloses MXD-6) and cobalt (4,500 ppm, average).

Claims 1-7, 12, 15, 22-24, 30, 33-35, 71, 76, 77 and 79 of the present application lack novelty because D7, in Claims 1, 3, 8, 9, 11, 17, 18, 20, 26, 30, 31, 34 and 36-38, discloses a method for removing or reducing the oxygen from a liquid in a transparent multi-layer package (such as a bottle, Figure 6) which comprises an oxygen-scavenging polymeric composition comprising solid-stated xylidene-substituted polyamide (MXD-6) and cobalt (250-500 ppm). Claims 36 and 38 of D7 disclose a package having a multi-layer plastic body comprising a core layer including an

oxygen scavenger, top and bottom layers surrounding the core layer and made of barrier polymers, wherein the top layer, disposed between the core layer and a product inside the body of the package, is permeable to a first component of the product selected from water, carbon dioxide and volatile organic compounds.

Claims 1, 2, 5, 6, 9, 10, 11, 12, 24, 76 and 80 of the present application lack novelty because D8, in Claims 1-3 and 7-13, discloses a method for removing oxygen from a liquid in a package, such as a transparent bottle (Figures 3 and 5) having multiple layers, including a top layer of at least one barrier layer (of polyethylene terephthalate) and another layer of an oxygen-scavenging polymeric composition comprising polyamides (MXD-6, page 15) and a cobalt catalyst, wherein at least the barrier layer contacts the product inside the package and is permeable to a component of the product, selected from water, carbon dioxide and volatile organic compounds.

Claims 1-6, 9, 11, 12, 15, 22, 24, 30, 76, 77 and 79 of the present application lack novelty because D10, in its Abstract, also discloses a method for removing or reducing the oxygen from a liquid contained in a package which comprises a wall or includes a layer of a composition comprising a polymer, a cobalt catalyst and an oxidizable organic compound, capable of removing oxygen. A preferred composition described is a mixture of 96% polyethylene terephthalate and 4% poly(m-xylylenedipamide) containing 200 ppm cobalt as a catalyst, exhibiting good properties for manufacturing a bottle.

Therefore, the present application lacks novelty according to Art. 33 of the Chilean Industrial Property Law 19.039.

b) Inventive Step Analysis

The final pronouncement on inventive step is pending until the referred novelty objection is overcome by the applicant.

III) ABSTRACT

The Abstract should include a summary of steps and/or basic elements.

The analysis of the Abstract is pending.

IV) SPECIFICATION

In pages 22, 23, 52, 54, 55, 56, 57, 66, 67, 69, 70, 71, 74, 76 and 78, the units should be converted into the decimal metric system.

Tables 6A and 6B should be inserted, because they are not included in the Spanish translation.

V) MISCELLANEOUS

Some minor typing corrections (lack of clarity) should be made in pages 37, 48, 58 and 71 of the Specification, which can be dealt with at our end.

Solely for indexing purposes, the Examiner proposes the following title: "Multi-layer package, such as a transparent bottle, having at least one layer of an oxygen-scavenging polymeric

composition comprising polyamide and cobalt in an amount of at least 200 ppm, and method for removing or reducing the oxygen from an aqueous liquid contained in the package."

In summary, the application as it presently stands is rejected as lacking novelty, according to Art. 33 of the Chilean Industrial Property Law 19.039.

We look forward to your instructions at your soonest convenience and prior to July 28, 2003. Meanwhile please find enclosed with the confirmation copy of this fax our relevant debit note.

Sincerely yours,

SARGENT & KRAHN

Juan Pablo Egaña B.

JPE/vv